

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NINA SHAHIN,	§
	§ No. 111, 2011
Petitioner/Appellant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
CITY OF DOVER, BOARD OF	§ C.A. No. K10A-06-002
ASSESSMENT,	§
	§
Respondent/Appellee Below-	§
Appellee.	§

Submitted: August 12, 2011

Decided: September 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 12th day of September 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, Nina Shahin, filed an appeal from the Superior Court's February 28, 2011 order affirming the May 3, 2010 decision of the respondent-appellee, the City of Dover Board of Assessment. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in April 2010, Nina Shahin filed an appeal to the Board of Assessment from the City of Dover's assessment of the value of her residential property located at 103 Shinnecock Road, Fox

Hall West, Dover, Delaware (the “Property”). The Property was purchased by Shahin and her husband in 2002 for \$223,000. In 2010, the City increased the assessed value of the Property to a total of \$286,700---\$90,600 for the land and \$198,100 for the improvements. As a result, the property tax on the Property increased from \$839.85 in 2009 to \$968.47 in 2010. In her appeal to the Board, Shahin asked that the Property be assessed at \$150,000 based on “for sale” listings in the Fox Hall West subdivision. The Board denied Shahin’s appeal. Thereafter, she appealed to the Superior Court, which affirmed the Board’s decision.

(3) Under Delaware law, a property owner seeking a reduction in a property assessment has a substantial evidentiary burden at both the administrative and appellate levels.¹ Before the Board of Assessment, the property owner faces a presumption of accuracy in favor of the existing assessment, a presumption that may be rebutted only by evidence of “substantial overvaluation.”² On appeal to the Superior Court, and on further appeal to this Court, the decision of the Board of Assessment is deemed to be “*prima facie* correct” and will be disturbed only if the

¹ *Seaford Associates, L.P. v. Board of Assessment Review*, 539 A.2d 1045, 1047-48 (Del. 1988).

² *Id.* (citing *Fitzsimmons v. McCorkle*, 214 A.2d 334, 337 (Del. 1965)).

appellant can demonstrate that the Board of Assessment “acted contrary to law, fraudulently, arbitrarily or capriciously.”³

(4) Delaware law further provides that real estate tax assessments must be based on the property’s fair market value.⁴ The definition of fair market value is “the price which would be agreed upon by a willing seller and a willing buyer, under ordinary circumstances, neither party being under any compulsion to buy or sell.”⁵ One of the three principal methods of determining fair market value is comparable sales.⁶ The Board is presumed to have the necessary expertise to evaluate competing methods of property valuation and make an informed judgment as to which method is more persuasive.⁷

(5) In this appeal from the Superior Court’s affirmance of the Board’s decision, Shahin claims that the Board of Assessment should have accepted her method of valuation of the Property. She contends that the Board acted contrary to law, fraudulently, arbitrarily and capriciously

³ *Board of Assessment Review v. Stewart*, 378 A.2d 113, 116 (Del. 1977); Del. Code Ann. tit. 9, § 8312(c).

⁴ *New Castle County Dep’t. of Fin. v. Teachers Insur. and Annuity Assoc.*, 669 A.2d 100, 102 (Del. 1995).

⁵ *Id.* (citing *Seaford Assoc. v. Board of Assessment Review*, 539 A.2d 1045, 1048 (Del. 1988)).

⁶ *Id.* The other two methods are income capitalization and reproduction cost. The first is best-suited for valuations of income-producing properties and the second can be unreliable and, therefore, is best used for establishing a ceiling on value. *Seaford Assoc. v. Board of Assessment Review*, 539 A.2d at 1048-49.

⁷ *Id.* at 102-03.

because its assessments reflect a pattern of discrimination based on national origin.

(6) The transcript of the Board of Assessment hearing reflects the following. The City submitted an information packet, which included a discussion of the square footage of the Property and the property used by the Assessor as a market comparable. Shahin presented the Board with copies of property information sheets used by homeowners in the Fox Hall West subdivision to sell their homes. She argued that a reduction in her assessment was justified based upon the information sheets and the fact that most of the homes listed for sale did not actually sell. She also argued that the Property was comparable to a neighbor's property, which had been assessed for \$35,200 less than hers.

(7) In its deliberations, the Board discussed the evidence presented by Shahin, the general features of the current real estate market and the unique history of the Fox Hall West subdivision. The Board noted that the property used by the City as a market comparable---a house that had sold for \$375,000 in 2007---represented the most recent sale in the subdivision. On the other hand, the property cited by Shahin as comparable to hers was actually 250 square feet smaller than hers. Following the above discussion,

the Board determined that Shahin had failed to rebut the presumption that the City's assessment of the Property was correct.

(8) We have carefully reviewed the record and the parties' submissions in this case. The record reflects that the Board properly considered the evidence before it, determined within its discretion that the City of Dover's method of valuation was more persuasive than Shahin's and, applying the correct legal standards, properly denied Shahin's appeal. In the absence of any evidence that the Board acted "contrary to law, fraudulently, arbitrarily or capriciously," we will affirm the Board's decision. Because Shahin's claim of discrimination on the basis of national origin was not presented to the Board in the first instance, we decline to address it for the first time in this appeal.⁸

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ Supr. Ct. R. 8.